
(2018) 06 MP CK 0114

In the Madhya Pradesh High Court

Case No : Criminal Revision No.1167 Of 2018

Hukum S/O Narrotam Madhukar And Another

APPELLANT

Vs

State Of Madhya Pradesh

RESPONDENT

Date of Decision : 25-06-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 397, 401
Indian Penal Code, 1860 — Section 34, 107, 306

Citation : (2018) 06 MP CK 0114

Hon'ble Judges : VIRENDER SINGH, J

Bench : Single Bench

Advocate : Anupam Chouhan, Hemant Sharma

Final Decision : Allowed

Judgement

This revision preferred under Section 397 read with Section 401 of Cr.P.C. calls in question the legality, propriety and correctness of order dated

19/02/2018 passed by the learned Additional Sessions Judge, Dharampur, District-Dhar in S.T. No.47/2018 whereby charge under Section 306/34 of

IPC has been framed against the petitioners.

2. Matter relates to alleged suicide committed by one Monu, on 16/10/2017. Allegations are that the petitioners slapped the deceased and also beat him

by shoe, as he was trying to call/contact their daughter/sister Pinki objecting as to why he is teasing their daughter/sister. Feeling insulted and harassed

by the same, the deceased consumed Phenyl tablets. He breathed last in the hospital on the same day.

3. Referring to a number of decisions rendered by Hon'ble Apex Court as well as by this Court, learned Counsel for the petitioners has contended that

even if the entire prosecution story is accepted as such, still prima-facie case for

abatement to commit suicide is not made out against the petitioners

because what is alleged against the petitioner is by itself cannot amount to abatement to commit suicide. The contention is that to constitute abatement

within the meaning of Section 306 read with Section 107 of IPC, there must be active encouragement, persuasion or instigation for committing suicide

which is not there in the present case. Lastly, it is submitted that the learned Trial Court while framing the charge has not examined all these aspects

and has mechanically framed the charge; therefore, the impugned order is not sustainable.

4. Per contra, it is submitted by the learned Public Prosecutor that the learned Trial Court on due consideration of material on record has framed the

charge under Section 306 read with Section 34 of IPC against the petitioners and from the record it is clear that the deceased was being subjected to

harassment by the petitioners, therefore, prima facie a case for abatement to commit suicide is made out.

5. Heard the learned counsel for the parties and perused the record.

6. To constitute abetment within the meaning of Section 107 read with Section 306 of the IPC, it must be demonstrated that the accused had

instigated, provoked, incited, suggested or goaded the deceased to commit suicide and that, such result was intended by the accused. In a number of

decisions, the Apex Court has considered whether harassment simpliciter can amount to abetment within the meaning of Section 107 read with

Section 306 of the IPC. Each time, the apex Court has answered the issue in negative stating that harassment simpliciter cannot amount to abetment.

In this regard, we can usefully refer to the decision rendered by this Court in M.Cr.C. No.1742/2016 (Bittu @ Giriraj vs. State of M.P., Order dated

08.03.2017, Bench Indore), wherein the legal position has been considered in the light of various pronouncements of Honâ??ble the apex Court;

relevant paras whereof run as under :-

9. 'Abetment to commit suicide' is an offence under Section 306 of IPC punishable with imprisonment for a term which may extend to 10 years and

fine. Expression 'Abetment' has been defined in Section 107 of IPC which runs as under :-

107. Abetment of a thing.-- A person abets the doing of a thing, who-First.- Instigates any person to do that thing; or Secondly.- Engages with one or

more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and

in order to the doing of that thing; or Thirdly.-Intentionally aids, by any act or illegal omission, the doing of that thing. Explanation 1.-A person who, by

willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to

cause or procure, a thing to be done, is said to instigate the doing of that thing. Explanation 2.-Whoever, either prior to or at the time of the commission

of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that

act

10. In the State of Punjab Vs. Iqbal Singh, AIR 1991 SC 1532, the apex Court explaining the meaning and expanse of word "abetment" as used

in Section 107 of IPC, has held as under:

"Abetment" as defined by Section 107 of the IPC comprises (i) instigation to do that thing which is an offence, (ii) engaging in any conspiracy for

the doing of that thing, and (iii) intentionally aiding by any act or illegal omission, the doing of that thing. Section 108 defines an abettor as a person who

abets an offence or who abets either the commission of an offence or the commission of an act which would be an offence. The word "instigate"

in the literary sense means to incite, set or urge on, stir up, goad, foment, stimulate, provoke, etc. The dictionary meaning of the word "aid" is to

give assistance, help etc.

11. In Ramesh Kumar vs. State of Chhatisgarh, (2001) 9 SCC 618, a three Judge Bench of the apex Court explaining the meaning and connotation of

word "instigation" has held as under (para. 20):

20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary

that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a

reasonable certainty to incite the consequence must be capable of being spelt out. the present one is not a case where the accused had by his acts or

omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in

which case an instigation may have been inferred. A word uttered in the fit of

anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

12. Taking note of the fact that each person's suicidability pattern is different from others and that each person has his own idea of self-esteem and self-respect, the apex Court in *M. Mohan Vs. State, Represented by the Deputy Superintendent of Police*, 2011 CRI.L.J. 1900 (S.C.), referring to its earlier decision in *Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi)*, 2009 (16) SCC 605, held that to constitute abetment, there should be intention to provoke, incite or encourage the doing of an act by the accused.

13. Reference can also be made to the decision of the apex Court in *Gangula Mohan Reddy Vs. State of Andhra Pradesh*, 2010 (Suppl.) Cr.L.R. (SC)

261, wherein the allegation was that the deceased was beaten by the accused and was also subjected to harassment, due to which he committed

suicide by consuming poisonous substance. The apex Court referring to its earlier decisions in *Mahendra Singh & Anr. Vs. State of M.P.*, (1995)

Supp. 3 SCC 731 and *Ramesh Kumar Vs. State of Chhatisgarh*, (2001) 9 SCC 618, holding that offence of abetment to commit suicide under Section

306 of IPC is not made out, observed as under:

“Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of

the accused to instigate or aid in committing suicide, conviction cannot be sustained”.

14. In *Deepak V. State of M.P.*, 1994 Cri. LJ 767 (M.P.), the deceased girl was threatened with defamation, if she refused to have sexual intercourse

with two accused; within an hour she committed suicide leaving a suicidal note. Accepting the plea that the act of the accused might have been a

reason for committing suicide but the same did not constitute abatement within the meaning of Section 306 read with Section 107 of the IPC, it was

held that -

“neither there was any intention nor any positive act on the part of the accused to instigate her or aid her in committing suicide. The two accused

persons, therefore, cannot be held guilty of the offence under Section 306 of the I.P.C. and their conviction on that count by the trial Court, is liable to

be set aside.”

15. In the case of Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, AIR 2002 S.C. 1998, the accused was charged under Section 306 of

IPC for abetting his brother-in-law to commit suicide; the accused allegedly said to him to 'go and die'; the deceased left behind a suicide note stating

that accused is responsible for his death. It was held that words 'go and die' do not constitute instigation for mens rea of offence under Section

307 of IPC.

16. In Mahendra Singh and Anr. Vs. State of M.P., 1996 Cri.L.J. 894=1995 Supp (3) SCC 731, a case prior to the insertion of Section 113-A in the

Evidence Act, the charge under Section 306 IPC proceeded on the basis of dying declaration of the deceased to the effect that 'My

mother-in-law and husband and sister-in-law (husband's elder brother's wife) harassed me. They beat me and abused me. My

husband Mahendra wants to marry a second time. He has illicit connections with my sister-in-law. Because of these reasons and being harassed I

want to die by burning.'

Considering legal sustainability of the same the apex Court held as under:

'Abetment has been defined in Section 107 I.P.C. to mean that a person abets the doing of a thing who firstly instigates any person to do a thing,

or secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in

pursuance of that conspiracy, and in order to the doing of that thing, or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing.

Neither of the ingredients of abetment are attracted on the statement of the deceased.'

17. From the aforesaid pronouncements of the apex Court, it flows that to constitute abetment to commit suicide, there must be material, prima-facie,

indicating that accused with a positive act on his part instigated, incited, aided or provoked the person to commit suicide.

18. In Devendra and others vs. State of Uttar Pradesh and another, (2009) 7 SCC 495, it has been held as under:

'when the allegations made in the first information report or the evidences collected during investigation do not satisfy the ingredients of an

offence, the superior courts would not encourage harassment of a person in a criminal court for nothing.'

7. Examining in the light of the aforesaid legal position, it cannot be said in the instant case that the deceased was instigated, persuaded, provoked, aided, incited or goaded by the petitioners to commit suicide, therefore, in the facts and circumstances of the case, it cannot even prima-facie be said that the deceased was abetted to commit suicide by the petitioners.

8. Resultantly, the petition is hereby allowed. The proceedings pending before learned ASJ, Dharampuri, District-Dhar in S.T. No.47/2018 for the offence under Section 306/34 of IPC quo the petitioners are hereby quashed. C.C. as per rules.